



UNITED STATES PATENT AND TRADEMARK OFFICE

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AUG 14 2006

In re Application of : **OFFICE OF PETITIONS**
Yamazaki, et al. : DECISION ON PETITION,
Application No. 10/823,020 :
Filed: April 12, 2004 :
Docket No.: 1232-5377 :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed July 13, 2006.

The petition is hereby **GRANTED**.

This application was held abandoned December 2, 2005 for failure to timely submit a proper reply to the restriction requirement mailed November 1, 2005. Notice of Abandonment was mailed June 22, 2006.

Petitioners assert non-receipt of the restriction requirement mailed November 1, 2005.

In the absence of any irregularity in the mailing of the Office communication, there is a strong presumption that the Office communication was properly mailed to practitioners at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.


In support of the petition, petitioners have provided a copy of the docket record where the non-final Office action would have

been entered had it been received along with a statement from petitioner that a search of the docket record and file jacket indicated that the non-final Office action was not received.

In view of the evidence presented, the Notice of Abandonment is hereby VACATED and the Notice of Abandonment is WITHDRAWN.

The application file is being forwarded to the technical support staff of Technology Center 2800 for mailing of a new Office action. The time period for response will be set to run from the date the new Office communication is mailed.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.


Alesia M. Brown
Petitions Attorney
Office of Petitions